

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
VICTOR DELGADO,

Movant,

-against-

UNITED STATES OF AMERICA,

Respondent.  
-----X

KIMBA M. WOOD, United States District Judge:

WHEREAS Victor Delgado (the “petitioner-defendant”) has filed a petition for a writ of *habeas corpus*, seeking to reinstate his right to a direct appeal on the ground of ineffective assistance of counsel; and

WHEREAS the Government, after reviewing the petition papers and the case file, has concluded that the testimony of the petitioner-defendant’s former trial counsel, Daniel McGuinness, Esq. (“Counsel”), will be needed in order to allow the Government to address the petition; and

WHEREAS the Court, after reviewing the petition papers, is satisfied that the testimony of Counsel is needed in order to allow the Government to respond to the petition; and

WHEREAS by filing the petition, the petitioner-defendant has waived the attorney-client privilege as a matter of law; and

WHEREAS the Court is cognizant that, absent court order or informed consent, ethical concerns may inhibit Counsel from disclosing confidential information relating to a prior client even in the absence of a privilege, *see, e.g.*, ABA Standing Comm. on Ethics and Prof.

Responsibility Formal Op. 10-456 (July 14, 2010), *Disclosure of Information to Prosecutor*

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 7/14/21

21-CV-4864 (KMW)

19-CR-732 (KMW)

**ORDER RE: ATTORNEY-CLIENT  
PRIVILEGE WAIVER (INFORMED  
CONSENT)**

*When Lawyer's Former Client Brings Ineffective Assistance of Counsel Claim,*

IT IS HEREBY ORDERED that Counsel shall give sworn testimony, in the form of an affidavit, addressing the allegations of ineffective assistance of counsel made by the petitioner-defendant; and it is further

ORDERED that the petitioner-defendant execute and return to this Court the accompanying "Attorney-Client Privilege Waiver (Informed Consent)" form. If the document is not executed and placed in the mail by August 2, 2021, the Court may deny the petition, on the ground that the movant failed to authorize the disclosure of information needed to permit the Government to respond to the petition; and it is further

ORDERED that the Government shall be permitted an additional 14 days from the receipt of said executed "Attorney-Client Privilege Waiver (Informed Consent)" form to obtain sworn testimony from Counsel in response to the petitioner-defendant's motions pursuant to section 2255 and Federal Rule of Civil Procedure 60(b); and it is further

ORDERED that the Clerk of Court shall mail a copy of this Order to Mr. Delgado and shall terminate the motion at ECF No. 56.

SO ORDERED.

Dated: New York, New York  
July 14, 2021

/s/ Kimba M. Wood  
KIMBA M. WOOD  
United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

- v. - :

VICTOR DELGADO, :

Defendant. :

:

-----X

**19-CR-732 (KMW)**  
**21-CV-4864 (KMW)**

**Attorney-Client Privilege Waiver (Informed Consent)**

To: Petitioner-Defendant Victor Delgado

You have filed a petition for a writ *habeas corpus* to have your right to file a direct appeal reinstated on the ground that you received ineffective assistance from your former lawyer, Daniel McGuinness, Esq. (referred to in this form as “your former attorney”). The court has reviewed your papers and determined that it needs to have a sworn testimonial statement from your former attorney in order to evaluate your petition.

By filing this petition, you have waived the attorney-client privilege you had with your former attorney to the extent relevant to determining your claim. That means that if you wish to press your claim of ineffective assistance, you cannot keep the communications between you and your former attorney a secret—you must allow them to be disclosed to the Government and to the Court pursuant to court order. The court has already issued an Order (copy attached) ordering your former attorney to give such testimony, in the form of an affidavit. This Informed Consent form is designed to ensure that you fully understand and agree to this.

Specifically, if you wish to proceed with your petition to reinstate your right to file a direct appeal on the basis that you received ineffective assistance of counsel, you must sign this statement and return it to the court in the attached envelope (keeping a copy for your records). The form constitutes your authorization to your former attorney to disclose confidential communications (1) only in response to a court order and (2) only to the extent necessary to shed light on the allegations of ineffective assistance of counsel that are raised by your petition.

You should know that if you sign this authorization, you run the risk that your former attorney will contradict your statements about his representation of you. However, you should also know that the court will deny your petition if you do not authorize your former attorney to give an affidavit in response to the Court's attached Order.

You must return this form, signed by you and notarized, within fourteen (14) days from the date of the Court's Order directing your former lawyer to give testimony. If the Court does not receive this form, signed by you and notarized, within that time, the court will automatically deny your petition.

#### NOTARIZED AUTHORIZATION

I have read the Court's Order dated \_\_\_\_\_ and this document headed Attorney-Client Privilege Waiver (Informed Consent). I hereby authorize my former attorney, Daniel McGuinness, Esq. to comply with the Court's Order by giving testimony, in the form ordered by the court, relating to my petition to reinstate my right to file a direct appeal on the ground of ineffective assistance of counsel. This authorization allows my former attorney to testify only pursuant to court order, and only to the extent necessary to shed light on the allegations of ineffective assistance of counsel that are raised by my petition.

Dated: \_\_\_\_\_  
\_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public